



上海论坛 2012 学术简报

Academic Bulletin of Shanghai Forum 2012

Legal Cooperation in Asia for 2011-2020 III

May 27, 2012

On the morning of May 27, the Legal Sub-Forum “Legal Cooperation in Asia for 2011-2020” of Shanghai Forum 2012 was held at the Room 2201, West Main Building of Guanghai Towers, Fudan University. The topic of this session is “The Cross-border Lawsuit and Arbitration in Asia”, which was chaired by Professor Zhang Wusheng from Fudan University School of Law.

First, Professor Zhang Wusheng from Fudan University School of Law made an introduction of the theme of the session. Then, scholars from China, Korea and Philippines made keynote reports.

He Zhonglin, Director of Hong Kong, Macao, Taiwan Affairs Office of the Supreme People’s Court, made a keynote report of “Interregional Judicial Assistance in China”. In the beginning, Director He Zhonglin briefly introduced the state quo of China’s international judicial assistance. China has signed more than one hundred agreements with about sixty countries around the world. Then, Mr. He Zhonglin focused on the framework of interregional judicial assistance in China. He believed that the legal systems are greatly different from each other among Mainland China, Taiwan, Hong Kong and Macao. Moreover, as Hong Kong and Macao have reunified with Mainland China, they have been integrated into the legal framework of “one-country-two-system”. The bilateral judicial assistance arrangement shall be rather than Hague Convention. Such arrangements have been concluded by officials from both sides, namely, the Supreme People’s Court, the Supreme People’s Procuratorate and other central authorities negotiating and coordinating with the authorities of Special Administrative Regions. Then, the Supreme People’s Court will publish specific judicial interpretation to carry out the arrangements, while the authorities of Hong Kong and Macao will enact relevant laws and regulations. Because of the separation of Mainland China and Taiwan, there has been no official judicial assistance arrangement between the two sides for a long time. But with the help of the China’s Association for Relations across the Taiwan Strait (hereinafter

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“ARATS”) and the Straits Exchange Foundation (hereinafter “SEF”), some judicial documents can still be delivered. Furthermore, no agreement has been reached on the recognition of the judgment. Such recognition is often made unilaterally. The Cross-strait Joint Fight against Crime and Mutual Legal Assistance Agreement was signed and entered into force in 2009. In terms of coverage, content and result, it is regarded as the best agreement concerning the judicial assistance among Greater China. It literally covers both civil and criminal cases, and actually involves administrative cases. Owing to its features, this agreement is well welcomed among the people of Taiwan. In the end, Director He Zhonglin shared his opinion on the trend of development of China’s interregional judicial assistance. Firstly, the scope of judicial assistance needs to be extended, especially, in the areas of investigation and obtaining evidence during civil procedure between Mainland China and Hong Kong. Moreover, there is no agreement on the criminal judicial assistance between Mainland China and Hong Kong, Macao. Second, the number of requests of judicial assistance relating to Taiwan is considerable, and the procedures are relatively complicated which slow down the process. At the same time, the res judicata of judgments from Mainland China is not recognized by Taiwan.

Hanki Sohn, Professor of College of Law, Yonsei University delivered a speech titled as “An Overview of the Recognition and Enforcement of Foreign Judgments and Arbitration of South Korea”. Professor Hanki Sohn noted that the international civil disputes increase with the globalization and development of international trade, thus the international judicial assistance is urgently needed. Professor Hanki Sohn stated that the recognition and enforcement of foreign judgment and arbitration award is more important than the judicial assistance at other stage. Article 217 of the Korean Code of Civil Procedure is the provision on recognition of foreign judgment in South Korea. It will be recognized automatically without the need of new judgment if the requirements are satisfied in Article 217. There are four requirements stipulated in Article 217 as follows: (a) the foreign court must have jurisdiction over the case pursuant to the principles of international jurisdiction under Korean laws or treaties; (b) the defendant who lost the action must have been served with a writ or document equivalent thereto and a notice of hearing or summons in a legitimate manner other



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than by public notice or similar method and with sufficient time to defend the case, or must have responded to such action; (c) the foreign judgment must not offend public policy or good morals of Korea; (d) the foreign judgment must be reciprocity. Nevertheless, the enforcement of foreign judgment does require the enforcement judgment from South Korean local court. But no matter the correctness of the previous judgment, it is not subject to substantive review of local court. When it comes to the recognition and enforcement of foreign arbitration award, the Article 217 shall be applied in this case since South Korea's accession to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards in 1973. In this regard, the enforcement of foreign arbitration award also requires the enforcement judgment. In the end, Professor Hanki Sohn pointed out that South Korea holds a positive attitude towards the foreign judgment and arbitration award in order to meet the trend of globalization and avoid the hostility against foreign judgment and arbitration award.

Tranquil S. Salvador, Professor from Ateneo Manila University of Philippines, delivered a speech titled as "Protecting Your Business Interest in the Philippines". Professor Salvador begun with an analysis in terms of ease of doing business, protecting investors, enforcing contracts. He attributed the economic success of Philippines to its sound legal system. Before a potential investor decides to engage in business in the Philippines, he must be familiar with the underlying legal system. As investments in the Philippines usually take the form of contracts, the permissible stipulations, enforceability and enforcement of the agreement in case of breach are significant to be determined by potential investors. The alternative dispute solutions include mediation, conciliation and so on. Arbitration in the Philippines may be ad hoc, institutionalized, or specialized. The criminal law of the Philippines also provides the protection to the investors, which contains Estafa, Bouncing Checks Law and crimes of falsification of commercial documents. Besides, Philippines has concluded

extradition treaties with more countries, therefore, commercial crimes will not easily be at large.

In the end of this session, Professor Xie Youping and Professor Xu Meijun, from Fudan University School of Law delivered their profound and wonderful comments. Professor Xie noted that the differences of the political framework, legal system and legal tradition bring the divergence on the definition of the same issue, therefore, the recognition and enforcement of foreign judgment may confront huge difficulties. Especially, when it refers to international crime aspect, China has experienced lots of setbacks in pursuit of corruptive official abroad. Professor Xu stated that knowing the law and regulations among Asian countries will support and safeguard the economic cooperation.